Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *V. B. v Canada Employment Insurance Commission*, 2019 SST 1337

Tribunal File Number: AD-19-557

BETWEEN:

V. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: November 7, 2019

Canada

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant, V. B. (Claimant), was hired by a school district as a X. After some dispute about his duties and the manner in which he performed his duties, the Claimant felt that he had no choice but to resign. He applied for Employment Insurance benefits but the Respondent, the Canada Employment Insurance Commission (Commission) denied his claim. The Commission maintained that decision when asked to reconsider.

[3] The Claimant appealed to the General Division, which dismissed his claim. He is now appealing to the Appeal Division.

[4] The appeal is denied. The Claimant has not established that the General Division made any error under any of the grounds established by section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

PRELIMINARY MATTERS

[5] The Claimant submitted a package of several documents to the Appeal Division on October 3, 2019. These documents include:

i. a X job description;
ii. some information related to the seating for what appears to be a graduation event;
iii. email correspondence directed or copied to the Claimant regarding grad seating, grad tickets and refunds;
iv. an information sheet on graduation ticket sale instructions, and;
v. an exchange of email between the Claimant and the school principal and others about a ticket sale deadline.

[6] The Claimant told me at his Appeal Division hearing that he submitted the job description document, as well as all of the other information, to support his claim that his job duties had changed and he had been subject to new job expectations. The Claimant relied on decisions of the Federal Court in *Paradis v Canada (Attorney General)*[1] and *Chopra v. Canada (Treasury Board)*[2] to support his request that I consider this new evidence as general background information,

[7] The case authorities cited by the Claimant confirm that evidence, whose purpose is general background information, may sometimes be considered in a judicial review. However, the courts only permit background evidence in judicial review where it is evidence that can help the court understand the relevant issues. Background evidence does not include evidence that is relevant to establish the merits of the review or appeal.

[8] In addition, this is not a judicial review. It is not clear that the courts would approve of the admission of evidence under a general background exception in an appeal to the Appeal Division. There is no judicial authority that specifically authorizes the Appeal Division to consider new evidence, even if it is general background information. However, numerous decisions have confirmed that the Appeal Division may only consider whether the General Division has made one or more of the errors in section 58(1) of the DESD Act and that it may not consider evidence that was not part of the General Division record.[3]

[9] Finally, there is no compelling reason to consider a general background exception. The new evidence does not help me to better understand the issues, or to determine whether the General Division misunderstood the evidence that was before it. It seems rather that the Claimant hopes to supplement the evidence that was before the General Division for the purpose of establishing the merits of his General Division appeal. The materials submitted by the Claimant do not meet the definition of "general background information".

---

[1] *Paradis v Canada (Attorney General),* 2016 FC 1282
[2] *Chopra v. Canada (Treasury Board),* T-200-99
[3] *Belo-Alves v. Canada (Attorney General),* 2014 FC 1100; *Tracey v. Canada (Attorney General),*2015 FC 1300; *Marcia v. Canada (Attorney General),* 2016 FC 1367; *Parchment v. Canada (Attorney General),* 2017 FC 354, 2018 FC 277

[10] I will not be considering any of the new evidence submitted by the Claimant in the package of October 3, 2019.

ISSUES

[11] Did the General Division err in law by imposing on the Claimant a more stringent standard of proof than "balance of probabilities"?

[12] Did the General Division err in law by not considering whether the employer had unduly pressured the Claimant to leave his employment?

[13] Was the General Division finding that the Claimant voluntarily left his employment made in a perverse or capricious manner or without regard to the material before it?

[14] Were the General Division findings related to the Claimant's circumstances made in a perverse or capricious manner or without regard to the material before it?

[15] Was the General Division's finding that the Claimant had reasonable alternatives to leaving made in a perverse or capricious manner or without regard to the material before it?

ANALYSIS

[16] The Appeal Division may intervene in a decision of the General Division, only if it can find that the General Division has made one of the types of errors described by the "grounds of appeal" in s.58(1) of the DESD Act.

[17] The grounds of appeal are described below:

a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record, or;
c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

Issue 1: Did the General Division err in law by imposing on the Claimant a more stringent standard of proof than "balance of probabilities"?

[18] Section 29(c) of the *Employment Insurance Act* (EI Act), states that just cause for leaving an employment will exist if a claimant has no reasonable alternative to leaving, having regard to all the circumstances. The Commission has the burden of proof to show that the Claimant has voluntarily left his employment. Once this is established, the burden shifts to the Claimant who must show that he had just cause for leaving. This means that it is up to the Claimant to show that he had no reasonable alternative to leaving his employment.[4]

[19] I granted leave to appeal because there was an arguable case that the General Division may have required the Claimant to establish that he had no reasonable alternatives on a higher standard of proof than a balance of probabilities.

[20] In reviewing the case law presented by the Claimant the General Division said:

> [the legal authorities] do not conclusively demonstrate, after considering all the circumstances particular to his case, that he had just cause for voluntarily leaving his employment.[5]

[21] It is possible to read this particular reference as applying a too-stringent standard to determine whether the Claimant had just cause. However, when I take the General Division's statement above in context, I am unable to conclude that the General Division was applying an incorrect standard.

[22] As I noted in the leave to appeal decision, balance of probabilities is the standard by which the General Division must find *facts*. The interpretation of the case law is not a fact to be found. The General Division's use of "conclusively demonstrates" is a reference to the General Division's assessment of the effect of the many CUB decisions and other court cases supplied by the Claimant. The General Division stated that cases that appear similar on their facts may still result in different decisions because they will have some different and unique facts.

---

[4] *Canada (Attorney General) v. White*, 2011 FCA 190
[5] General Division decision, para. 59

[23] Furthermore, the General Division stated explicitly that the Claimant had reasonable alternatives to leaving, *on a balance of probabilities.* [6]

[24] I find that the more likely interpretation of the General Division's use of "conclusive" is that the General Division considered that the case authorities that the Claimant supplied were inconclusive as to *what the law says* about his particular circumstances, or about *the result that the law would require*.

[25] The Claimant also argued that he should have been given the benefit of the doubt. He referred to section 49(2) of the EI Act and to some explanatory information from the Digest of Benefit Entitlement Principles and he observed that this meant that he should only have had to satisfy a "probability threshold of 50% to win." I agree that where the evidence is equally weighted on any finding on a circumstance or condition that could have the effect of disqualifying the Claimant from benefits, that Commission would have had to find in favour of the Claimant. The Federal Court of Appeal in *Chaoui v Canada (Attorney General)*[7] has said that section 49(2) applies only to the Commission and not to appellate decisions.

[26] In any event, the decision does not suggest that the General Division considered the evidence to be equally weighted on any such circumstance or condition. Furthermore, it is not the Appeal Division's role to interfere in the General Division's assessment of the evidence or to reweigh the evidence.[8] The "benefit of the doubt" does not come into play.

[27] I find that the General Division made no error of law under section 58(1)(b) of the DESD Act in its application of the standard of proof.

Issue 2: Did the General Division err in law by not considering whether the employer had unduly pressured the Claimant to leave his employment?

[28] Section 29(c) of the EI Act states that the determination of just cause involves consideration of "all the circumstances". It does not limit the circumstances that are relevant to determining just cause, but it does include a list of particular circumstances that must be

---

[6] General Division decision, para. 62
[7] *Chaoui v Canada (Attorney General)*, 2005 FCA 66
[8] *Bergeron v. Canada (Attorney General)*, 2016 FC 220; *Hideq v. Canada (Attorney General)*, 2017 FC 439; *Parchment v. Canada (Attorney General)*, 2017 FC 354

considered—wherever their existence is supported by the evidence. One of the listed circumstances is section 29(c)(xiii), "undue pressure by an employer on the claimant to leave their employment".

[29] The Claimant argued that the General Division was wrong to find that he had reasonable alternatives to leaving because the General Division failed to consider that he had been under undue pressure to quit. He argued that there was evidence of undue pressure before the General Division and he directed me to a screenshot of a text exchange with his former assistant after he resigned. In that text exchange, his assistant stated:

> I know it was your choice… [the principal] told me it was your choice but they forced your hand… I agree, I think they wanted you to stay longer.. You wanted to get back at him and with both of us gone this certainly puts him in a predicament…[9]

[30] I note that the text above was in response to the Claimant's text to his supervisor (also in evidence before the General Division) in which he says the following about his resignation:

> [by the way] the decision to go today was my choice, they were just following protocol. They were likely surprised by my reaction… They likely wanted 6 extra months to find someone else to replace me and it backfired.[10]

[31] The Claimant is correct that the General Division did not refer to this text exchange and that it did not consider whether the Claimant was facing undue pressure to leave. However, the text exchange is not probative of the employer's motive for extending the Claimant's probation. At best, it is evidence that the Claimant's assistant believes the employer's actions caused the Claimant to make a decision.

[32] The Claimant clearly felt unappreciated at his work and under stress but, in his own evidence, he had not characterized the situation as one in which he was under pressure to leave.

---

[9] GD3-71
[10] GD3-70

In fact, his response to his assistant's text suggests that he did not think the employer wanted him to leave for at least another six months.

[33] I note that the General Division captured a number of the Claimant's concerns with the manner in which he was supervised and evaluated (including the extension of his probation), when it analyzed whether those circumstances amounted to harassment or antagonism from a supervisor.[11]

[34] In my view, the evidence before the General Division was not such as to require it to specifically analyze whether the Claimant's circumstances represented undue pressure on the Claimant to leave his employment, or to consider how any such undue pressure impacted his reasonable alternatives to leaving when he did.

[35] The General Division did not err in law under section 58(1)(b) of the DESD Act by failing to consider whether the Claimant's circumstances included undue pressure on the Claimant to leave his employment.

Issue 3: Was the General Division finding that the Claimant voluntarily left his employment made in a perverse or capricious manner or without regard to the material before it?

[36] The Claimant has provided extensive submissions in which he states his disagreement with the General Division's assessment of the evidence and with many of the General Division's findings of fact. As I have noted, it is not my role to reweigh or reassess the evidence. To intervene, I would have to find that some key finding of fact was perverse or capricious, or that it ignored or misunderstood the evidence that was before the General Division. "Perverse or capricious" is a legal term that comes from the legal test in section 58(1)(c) of the DESD Act. A perverse or capricious finding is a finding that is against the weight of the evidence or that is illogical or inconsistent. There are several key findings of fact with which the Claimant disagrees. I will address these in turn.

[11] General Division decision, paras. 11, 12

Voluntary leaving

[37] The General Division's finding that the Claimant voluntarily left his employment was based in part on the Claimant's testimony that he quit instead of accepting an extension to his probation period. This is also supported by the text evidence referenced above.

[38] The Claimant argued that the General Division ignored his evidence that he had no choice but to quit, and that his resignation was not voluntary. In saying that he was coerced to quit, the Claimant relied on a number of circumstances which he found to be intolerable and which eventually caused him to resign.

[39] In *Canada (Attorney General) v Peace*,[12] the Federal Court of Appeal dismissed arguments that it should apply the common law concept of "constructive dismissal" to allow employees to treat their employment relationship as terminated for Employment Insurance purposes. *Peace* said that the question is simple: Did the employee have a choice to leave or to stay?"

[40] There was evidence before the General Division that the Claimant had a choice to stay at the time that he left. The circumstances that caused the Claimant to feel compelled to quit were relevant to the General Division's assessment of his reasonable alternatives to leaving. However, the General Division was not required to consider whether the Claimant's circumstances allowed him to treat himself as having been dismissed, for the purpose of determining if he voluntarily left his employment.

[41] The General Division did not err under section 58(1)(c) of the DESD Act by finding that the Claimant voluntarily left his employment.

Issue 4: Were the General Division findings related to the Claimant's circumstances made in a perverse or capricious manner or without regard to the material before it?

[42] The Claimant asserted that a number of circumstances were involved in his decision to quit, which were relevant to the question of whether he had reasonable alternatives to leaving. I will consider the General Division findings on these circumstances below.

---

[12] *Canada (Attorney General) v Peace*, 2004 FCA 56

Harassment; Antagonism with a supervisor

[43] Harassment is the circumstance identified in section 29(c)(i) of the EI Act. The Claimant argued that the General Division ignored evidence that he was harassed by his employer.

[44] The Claimant was hired by and responsible to his school district. However, he worked out of a X in a school where he was supervised by the principal of the school. The General Division stated that the Claimant testified that his supervisor acted as follows:

a) He unjustly criticized the Claimant's requests;
b) He levelled vague and unfounded accusations against the Claimant / denied the Claimant the opportunity to defend himself against the charges;
c) He conducted dishonest and unfair assessments of the Claimant's work;
d) He extended his probationary period.

[45] In his argument to the Appeal Division, the Claimant said that the General Division ignored the above actions, as well as a number of other actions that the General Division did not reference. The Claimant said that the General Division ignored evidence that the supervisor/employer also:

a) made demands that were contrary to policy or required that he disregard policy, contrary to prior instructions, or outside his job description;
b) set unreasonable and changing subjective standards of performance;
c) did not support him and interfered with his work, and;
d) restricted his movements.

[46] The Claimant also stated that the General Division ignored other evidence including the school district's policies and procedures, the high school handbook, the principal's instructions, his assistant's text messages, and emails from staff.

[47] The General Division stated that it reviewed the information sent by the Claimant describing the communications between himself, his supervisor, and his assistant, along with his performance reviews, and the Claimant's testimony and statements regarding their interactions.

The General Division observed that the tone of the performance reviews and emails was professional and respectful and that the employer was entitled to provide feedback on areas in which it believed the Claimant could improve. In the end, the General Division determined that the Claimant had not demonstrated that he was harassed.

[48] The reasons of the General Division do not particularize every statement or document that was submitted by the Claimant and they may not engage every one of the Claimant's assertions in as much detail as he would like. However, I accept that the General Division understood the nature and extent of the employer's actions that the Claimant considered to be harassment. As noted by the Federal Court of Appeal in *Simpson v. Canada (Attorney General),*[13]

> a tribunal need not refer in its reasons to each and every piece of evidence before it, but is presumed to have considered all the evidence. Second, assigning weight to evidence, whether oral or written, is the province of the trier of fact.

[49] I am not satisfied that the General Division decision leaves out any evidence that is relevant to harassment and that could be significant to the decision. The Claimant has not identified any substantial omissions from which I could infer that the General Division ignored evidence of harassment.

[50] Another of the circumstances listed in section 29(c) of the EI Act is 29(c)(x), antagonism with a supervisor if the claimant is not primarily responsible for the antagonism. Many of the employer's actions that the Claimant characterized as harassment were also the actions of the principal of the school. The principal was the Claimant's supervisor. Therefore, the Claimant relied on many of the same assertions and evidence to support his position that he experienced antagonism. For example, the Claimant stated that he was unjustly accused and not permitted to defend himself. This incident involved an incident in which the principal told him that someone had complained about him before verifying the complaint. He experienced this incident as harassment and also as antagonism from his supervisor. It was also the principal who prepared

[13] *Simpson v. Canada (Attorney General)*2012 FCA 82

the Claimant's performance review and discussed the review with the Claimant. The principal was responsible for much of the criticism that the Claimant experienced.

[51] Nonetheless, the General Division did not accept that the Claimant's interactions with the principal were anything other than professional and it did not accept that the Claimant had established antagonism.

[52] I understand that the Claimant believes that the General Division should have given more weight to his perception of the employer's actions as harassing and of the principal's actions as being antagonistic. However, I cannot reweigh the evidence to reach a different conclusion. I am not satisfied that the General Division overlooked or misunderstood any significant, relevant evidence or that its finding that the Claimant was not harassed was perverse or capricious. As stated in *Rouleau v Canada (Attorney General)*,[14] "showing that the findings of fact are debatable does not reach the high bar of "perverse or capricious or without regard for the material".

Significant change in work duties

[53] Section 29(c)(ix) of the EI Act identifies a "significant change in work duties" as a relevant circumstance. The Claimant was hired as a X. In his view, the employer's demand that he be more positive, or perform his duties in a more compassionate or empathetic manner, was a significant change. He also described certain other duties that he said were outside of his job description. One example was managing a staff liquor fund. Others included selling bus passes, and ordering books, which the Claimant said were duties that were in his assistant's job description. In addition, the Clamant stated that the principal required him to prioritize serving staff and students over his primary work responsibilities. The Claimant viewed these requirements as a significant change in his duties.

[54] The General Division found that the employer had not significantly changed his work duties. It found that the principal only asked the Claimant to approach his regular duties in a

[14] *Rouleau v Canada (Attorney General)* 2017 FC 534

different way, and that additional duties such tasks as selling bus passes and ordering books for teachers were not significant.

[55] From the Claimant's perspective, the General Division missed the point. The school principle was not just asking that the Claimant approach his duties in a new way, or that he occasionally take on additional minor tasks that were not strictly within his job description. The Claimant said that his primary work required concentration, and that the principal's insistence that he prioritize serving people as they visited the office interfered with his ability to do the job that he was hired to do. As the General Division noted, the Claimant testified that putting "people first" would mean that he would fall behind in his work and miss deadlines.[15]

[56] The Claimant testified that he was hired to manage the financial activities of the district in accordance with generally accepted accounting principles and district requirements. He gave examples from his job description that included managing the financial controls, assisting with budgeting, and implementing financial policies. He also provided the job posting for the X position at his school, which confirmed his primary duties and responsibilities related to accounting, auditing, and financial work.[16] He was an employee of the District—not the school—and he was accountable to head office to meet his duties as a X within deadlines.

[57] The Claimant testified that he knew he was losing his assistant by the time he quit. In addition, the principal gave him a letter that directed him to keep the X office door open at all times during office hours. These changes meant that he would have to deal with even more interruptions and that even more of his job would involve serving the people that came to the business office.

[58] I understand that the school principal's expectations made the Claimant's work environment challenging. However, the question of whether the increased emphasis on customer service represented "a significant change in the Claimant's work circumstances" is a question of fact. The General Division found as fact it did not. In reaching that finding, the General Division referred to the Claimant's evidence that he was asked to do some tasks that were not in his job

[15] General Division decision, para. 36.
[16] GD3-48

description.[17] The General Division also captured the Claimant's position that putting people first and performing these additional tasks interfered with his duties and deadlines and with his ability to do his primary work.[18]

[59] The General Division did not ignore or misunderstand evidence related to a change in the Claimant's work duties, and its findings were not perverse or capricious.

Danger to health

[60] In his submissions to the Appeal Division, the Claimant referred to some general information related to the definition of workplace stress and some common sources. This was not in evidence before the General Division, and the General Division did not err by failing to take judicial notice that work demands can result in employee stress.

[61] The Claimant did not provide any medical evidence to the General Division that related his symptoms to his work duties, recommended that he avoid work or work duties to avoid further injury or disability, or diagnosed him with stress or any other ailment or condition. Therefore, the General Division did not find that the Claimant's work situation was affecting him to the extent that he had to leave. Given that there was no medical diagnosis or recommendation, the general background information dealing with stress that the Claimant provided would have had little relevance.

[62] The General Division did not ignore or misunderstand any evidence related to whether the Claimant's work circumstances posed a danger to his health, and its finding on this question is not perverse or capricious.

[63] In summary, the Claimant has not pointed to significant, relevant evidence that the General Division ignored or misunderstood when it made any of its findings related to the existence of circumstances that may be relevant to the Claimant's reasonable alternatives to leaving. There is no error in these findings under section 58(1)(c) of the DESD Act.

---

[17] General Division decision, para 37
[18] General Division decision, paras. 36-39, 42

Issue 5: Was the General Division's finding that the Claimant had reasonable alternatives to leaving made in a perverse or capricious manner or without regard to the material before it?

[64] The General Division said that it had regard to all the circumstances when it found that the Claimant had the reasonable alternative of looking for and securing alternative employment before resigning, and of discussing his concerns with Human Resources. It also said that he could have consulted a medical professional.

Reasonable alternative of seeking other employment

[65] The Claimant checked whether he could transfer to one of the many other schools within his school division. However, he did not dispute that the he did not look for work elsewhere. The General Division said that he should have looked outside his organization (the school district) when he could not obtain a transfer immediately.

[66] The Claimant disagrees that he should have to seek and obtain alternative employment outside his school district, but he has not identified any evidence that was ignored or misunderstood. Nor was the General Division's finding on this issue was not perverse or capricious.

Reasonable alternative of discussing his concerns with Human Resources

[67] The General Division also found that a reasonable alternative to quitting would have been for the Claimant to discuss his concerns with the District, or with Human Resources. The Claimant testified to the General Division that he believed the Human Resources Department would have been involved in the school principal's decision to extend his probation. He said that there would have been no point in raising his concerns with Human Resources, because they had already sided with the principle.

[68] The General Division said that the Claimant could not have known this for certain, and could not have known whether Human Resources might have been helpful in presenting other options. The General Division's decision is supported by the Claimant's own testimony that Human Resources had not heard his side of what was going on.

[69] There was no evidence that the Claimant tried to resolve his concerns with the District or with Human Resources, or that Human Resources would have been unsupportive if they had heard his side of the story. The General Division did not ignore or misunderstand the evidence when it found that such a discussion would have been a reasonable alternative, and its finding was not perverse or capricious.

Reasonable alternative of seeking medical support

[70] The General Division stated that the Claimant had the reasonable alternative of seeking medical support before leaving. Regardless of the fact that the Claimant felt that his working conditions were stressful and that he believes he experienced physical symptoms as a result, he did not provide any evidence that the working conditions were a danger to his health.

[71] The Claimant confirmed that he did not speak to a doctor about his symptoms or his working conditions. The General Division understood that the Claimant did not put much faith in doctors or other professionals and that this was the reason he did not seek their assistance. However, as the General Division noted, if the Claimant had sought medical attention (and if the doctor confirmed that his working conditions were harmful) his doctor might still have recommended accommodations to mitigate the harm. The General Division's finding did not ignore or misunderstand the Claimant's evidence and was not perverse or capricious.

[72] The General Division did not make any error under section 58(1)(c) when it found that the Claimant had reasonable alternatives.

CONCLUSION

[73] I have not found that the General Division made any errors under the grounds of appeal established by section 58(1) of the DESD Act.

[74] The appeal is dismissed.

Stephen Bergen
Member, Appeal Division

HEARD ON:	October 22, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	V. B., Appellant S. Prud'homme, Representative for the Respondent, the Canada Employment Insurance Commission